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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/019,494	03/08/2002	Samuel D. Bernal	65879-5006	1407

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EXAMINER	
EBRAHIM, NABILA G	

ART UNIT	PAPER NUMBER
1618	

NOTIFICATION DATE	DELIVERY MODE
12/30/2009	ELECTRONIC

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

patentdocket@jmbm.com

Advisory Action Before the Filing of an Appeal Brief	Application No.	Applicant(s)	
	10/019,494	BERNAL ET AL.	
	Examiner	Art Unit	
	NABILA G. EBRAHIM	1618	

--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

THE REPLY FILED 23 November 2009 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE.

1. ☒ The reply was filed after a final rejection, but prior to or on the same day as filing a Notice of Appeal. To avoid abandonment of this application, applicant must timely file one of the following replies: (1) an amendment, affidavit, or other evidence, which places the application in condition for allowance; (2) a Notice of Appeal (with appeal fee) in compliance with 37 CFR 41.31; or (3) a Request for Continued Examination (RCE) in compliance with 37 CFR 1.114. The reply must be filed within one of the following time periods:

a) ☐ The period for reply expires _____months from the mailing date of the final rejection.

b) ☒ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.

Examiner Note: If box 1 is checked, check either box (a) or (b). ONLY CHECK BOX (b) WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

NOTICE OF APPEAL

2. ☐ The Notice of Appeal was filed on _____. A brief in compliance with 37 CFR 41.37 must be filed within two months of the date of filing the Notice of Appeal (37 CFR 41.37(a)), or any extension thereof (37 CFR 41.37(e)), to avoid dismissal of the appeal. Since a Notice of Appeal has been filed, any reply must be filed within the time period set forth in 37 CFR 41.37(a).

AMENDMENTS

3. ☐ The proposed amendment(s) filed after a final rejection, but prior to the date of filing a brief, will not be entered because
   (a) ☐ They raise new issues that would require further consideration and/or search (see NOTE below);
   (b) ☐ They raise the issue of new matter (see NOTE below);
   (c) ☐ They are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or
   (d) ☐ They present additional claims without canceling a corresponding number of finally rejected claims.

   NOTE: _____. (See 37 CFR 1.116 and 41.33(a)).

4. ☐ The amendments are not in compliance with 37 CFR 1.121. See attached Notice of Non-Compliant Amendment (PTOL-324).

5. ☐ Applicant's reply has overcome the following rejection(s): _____.

6. ☐ Newly proposed or amended claim(s) _____ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).

7. ☐ For purposes of appeal, the proposed amendment(s): a) ☐ will not be entered, or b) ☐ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.
   The status of the claim(s) is (or will be) as follows:
   Claim(s) allowed: _____.
   Claim(s) objected to: _____.
   Claim(s) rejected: _____.
   Claim(s) withdrawn from consideration: _____.

AFFIDAVIT OR OTHER EVIDENCE

8. ☐ The affidavit or other evidence filed after a final action, but before or on the date of filing a Notice of Appeal will not be entered because applicant failed to provide a showing of good and sufficient reasons why the affidavit or other evidence is necessary and was not earlier presented. See 37 CFR 1.116(e).

9. ☐ The affidavit or other evidence filed after the date of filing a Notice of Appeal, but prior to the date of filing a brief, will not be entered because the affidavit or other evidence failed to overcome all rejections under appeal and/or appellant fails to provide a showing a good and sufficient reasons why it is necessary and was not earlier presented. See 37 CFR 41.33(d)(1).

10. ☐ The affidavit or other evidence is entered. An explanation of the status of the claims after entry is below or attached.

REQUEST FOR RECONSIDERATION/OTHER

11. ☒ The request for reconsideration has been considered but does NOT place the application in condition for allowance because: See Continuation Sheet.

12. ☒ Note the attached Information *Disclosure Statement*(s). (PTO/SB/08) Paper No(s). _____

13. ☐ Other: _____.

/Michael G. Hartley/
Supervisory Patent Examiner, Art Unit 1618

Continuation of 11. does NOT place the application in condition for allowance because: Applicant argues that the Examiner had not met her burden in establishing the prima facie case of obviousness citing Oseroff for disclosing that "it is possible that other cationic molecules that concentrate within the mitochondria at higher levels or that is more efficient photosensitizers will still be more effective:". The Examiner also cites Oseroff teaches generally that Oseroff teaches that carcinoma cell mitochondria preferentially accumulate and retain cationic dyes to a much greater extent than most normal cells. Pomerantz who discloses Toluidine blue 0 which is not claimed in the present invention. and Brenner who teaches that phenosafranin dye does not stain the mitochondria. This was not found persuasive because Pomerantz teaches that in-vivo diagnostic procedures for detection of premalignant oral lesions or oral carcinomas, employing dye compositions, which are selectively retained by tissues rendered abnormal due to dysplasia, hyperplasia, tumorigenesis, and other active surface lesions, are known in the art.. Regarding Brenner, it is noted that the reference does not teach that phenosafranins dye does not stain the mitochondria. However, it is the position of the Examiner that since phenosafranin was disclosed generically in the instant specification once. No further specific type, formula for the compound or description was disclosed. Thus, the genus green B (diethylsafranin is a species derived from the genus phenosafranin taught by instant application) is the species disclosed by Brenner which reads on the generic disclosure. Therefore, it noted that disclosing diethylsafranin is sufficient to establish the prima facie case of obviousness and satisfy the Applicant's arguments regarding MPEP §2144.08. Applicant alleges that it is not acceptable to try all cationic dyes to reach the instant claimed invention and provides evidence that these reaches (1000 dyes). To respond to Applicant, it is noted that the document provided provides no evidence of a number of CATIONIC DYES, it only provides number of ALL stains. Further, cationic dyes as mentioned in the invention are a group of dyes that are known to be used in medicine (see all the documents that are provided by the Examiner since the beginning of prosecution). However, there are a good number of cationic dyes that are -for example- used in staining fabric and cloth. It is also noted that even among these stains there are some stains specialized in staining acrylic fibers, wool etc. Therefore, the number 1000 would not be the correct precise number used in trials. In addition, since in vitro experiments are available to people having ordinary skill in the art, it is expected that medical sciences would be able to handle the finite number of possibilities that arise in this respect without difficulty provided that the benefits that returns from such experiments would be rewarding as expected by Oseroff. The Examiner will attach a document that shows CATIONIC DYES only -not all types of dyes- that are ONLY 45 dyes, however, these include cationic dyes that may or may not be safe in use for medical purposes which can be easily verified by people having ordinary skill in the art.